IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1914 of 2006

M/S.HAPPY SALES
V/S
RENT APPELLATE TRIBUNAL, BIKANER & ORS.

Mr. SANJEET PUROHIT for Mr. VIKAS BALIA, for the appellant / petitioner

Mr. D.D.CHITLANGI, for the respondent

Date of Order : 19.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the learned trial court was in error in declining the prayer of the petitioner to produce the partnership deed, whereby the partnership was entered into between the petitioner and the alleged sub tenant Gulam Mohd. Bhati. The other submission made is, that from the evidence of P.W.1 and 2 it is not established, that exclusive possession was given to the alleged sub tenant, apart from the fact that in the eviction petition it is not disclosed as to, to whom the property has been sublet, and therefore, the order of eviction, as upheld by the learned Appellate Court, is bad.

I have considered the submissions, and have gone through the record, which was requisitioned pursuant to the order of this Court. A perusal of the record shows, that so far the theory of partnership is concerned, in the entire record there is not even a whisper in that regard, that the alleged sub tenant is not a sub tenant but is a partner of the petitioner, and is carrying on business in the partnership. The application for production of the copy of partnership deed was filed on 14.5.2004, alleging that the partnership deed was misplaced and could be located on 13.5.2004 only, and is a material document.

Significantly the partnership deed alleged to be dated 21.3.2003, and even in the reply filed to the eviction petition, which was filed as late as on 3.12.2003, there is not a whisper about existence of any partnership. It is required to be grasped, that if partnership had been entered into on 21.3.2003 itself, it is too much to assume, that the petitioner would not be aware of the fact of partnership, and would not choose to plead it. Then, yet another aspect of the matter is, that even despite making the application for taking partnership deed on record, nothing was suggested in this regard to any of the plaintiff's witnesses in cross examination, about the alleged sub tenant being a partner, and not a sub tenant. Then, even the petitioner, in his own affidavit also has not even whispered about any such partnership, and even

when he was cross examined at length on this aspect, and was confronted with the document Ex.-7, which of course has not been believed by the learned Appellate Court, still, the petitioner only deposed ignorance, and denied Gulam Mohd. Bhati to be carrying on business in the shop, and asserted himself alone to be carrying on business in the shop, and did not depose about there being any partnership.

In such circumstances, I do not find any error on the part of the learned trial court, in not taking the partnership deed on record, more so when admittedly the partnership deed is not registered with the Registrar of Firms.

Then, examining the merits, the findings recorded by the learned Appellate Court are clearly findings of fact, arrived at after appreciation of evidence of the parties. As such, I do not find any sufficient ground, to continue the interim stay order passed by this Court on 21.4.2006. The stay order is, therefore, vacated, and the stay petition is dismissed.

(N P GUPTA),J.

/Sushil/